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# Affordable Housing and Civic Participation: Two Sides of the Same Coin

Goutam U. Jois\*

## I. INTRODUCTION

America faces an affordable housing crisis.<sup>1</sup> The cost of housing continues to rise, making home ownership impossible for many. In some markets, the cost of renting is so high that even those earning close to the median income are considered cost-burdened.<sup>2</sup> According to a recent study, nearly one hundred million Americans “lack safe, decent, affordable housing.”<sup>3</sup> But understanding the housing crisis requires an understanding of our country’s recent history. Then, and perhaps only then, can scholars and policymakers meaningfully address the issue of affordable housing and simultaneously strengthen America’s communities.

The decades following World War II were marked by two distinct social phenomena: suburbanization on the one hand and the deterioration of civil society on the other. While these trends appear unrelated at first, the two are deeply interrelated. The rise of American suburbs paralleled a decline in the quality of our urban centers,<sup>4</sup> as urban life became

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\* J.D., 2007, Harvard; A.B., 2003, M.P.P., 2004, Georgetown. gjois@post.harvard.edu. This article is informed by my experiences as a Student Attorney at the Harvard Legal Aid Bureau and on my work in the civic engagement field and so draws on a variety of people’s insight and help over the years. I especially want to thank Clarissa Bronson, Gerald Frug, Rick Glassman, David Grossman, and Roy Tsao for their comments and advice at various stages of this Article. I benefited from excellent research assistance from Belkis Wille, Danielle Stockley, Tina Gonzalez, and Michael Padgett. Last, but certainly not least, I want to thank my parents, Umesh and Indira; my sisters, Malasa and Mallika; and my fiancée, Elizabeth Brown, for their continued love and support. All perceived errors are mine.

1. See *infra* Section IV.A.1 for a more thorough discussion of the affordable housing shortage.

2. ALASTAIR SMITH, JOINT CENTER FOR HOUSING STUDIES OF HARVARD UNIVERSITY AND NEIGHBORHOOD REINVESTMENT CORPORATION, MIXED-INCOME HOUSING DEVELOPMENTS: PROMISE AND REALITY 16 (2002).

3. NAT’L LOW INCOME HOUS. COAL., AMERICA’S NEIGHBORS: THE AFFORDABLE HOUSING CRISIS AND THE PEOPLE IT AFFECTS 16 (2004) [hereinafter AMERICA’S NEIGHBORS].

4. *But see* J. ERIC OLIVER, DEMOCRACY IN SUBURBIA 4 (2001) (“Most assertions about suburban civic life are based on either pure speculation or [non-generalizable] case studies of individual places done in the 1950s and 1960s.”) (citations omitted). See *generally* DOLORES HAYDEN, BUILDING SUBURBIA (2004); KENNETH T. JACKSON, CRABGRASS FRONTIER: THE SUBURBANIZATION OF THE UNITED STATES (1987).

increasingly violent, hopeless, and stratified (particularly by race and class).<sup>5</sup> At roughly the same time, civic engagement in this country entered into a long and steady decline that matched the decline of the cities,<sup>6</sup> and interestingly, civic engagement fell even in the new suburbs—suburbs that were supposed to bring a newer, better sense of community. The collapse was particularly evident in the so-called “inner cities,” where living standards fell, drug use increased, violence reigned, and civil society was eviscerated.<sup>7</sup> We stand today at a time in our history where the livability of our cities and civic engagement are both at a low. Understanding how the two are related will go a long way toward determining how these problems can be addressed.

This Article aims to combine theory and practice in re-conceptualizing the issue of affordable housing in America. Although affordable housing advocates almost always recognize the importance of community,<sup>8</sup> their empirical analyses often do not explore why community matters or what benefits a reinvigorated community might bring. Conversely, political theorists writing about issues of city space often only tangentially (if at all) consider specific practices and policies to expand the availability of housing to low- and moderate-income citizens. It is rarer still to find a study that explores the important interaction between affordable housing, democratic participation, and revitalizing our inner cities. It is precisely this insight that this Article offers. Policymakers must recognize the linkages between urban policy, affordable housing, civic participation, and American democracy in order to successfully increase both affordable housing and civic engagement.

Part II of this Article examines the trends in civic engagement that are affecting American communities and civil society. Part III outlines the various ways in which our cities have declined over the past half-century, in particular focusing on urban deterioration as a result of suburban development. Part IV explores the problem of affordable housing in detail, arguing for an expansion of affordable housing through high-density, mixed-income, mixed-use development, drawing on new

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5. ANTHONY DOWNS, *NEW VISIONS FOR METROPOLITAN AMERICA* 70 (1994).

6. ROBERT PUTNAM, *BOWLING ALONE: THE COLLAPSE AND REVIVAL OF AMERICAN COMMUNITY* 27 (2000). “Civic engagement” has a variety of definitions, and Putnam employs a very broad definition. In his book, Eric Oliver focuses on “five important types of local civic activity”: voting, contacting officials, attending community board meetings, participating in voluntary organizations, and working informally with neighbors. OLIVER, *supra* note 4, at 19–20. In an article examining *youth* civic engagement, Goutam U. Jois and Chris Toppe focus exclusively on voting and volunteering. See Goutam U. Jois & Chris Toppe, *Youth Attitudes Toward Voting and Volunteering: 2002, 2004, and Beyond*, 10 GEO. PUB. POL’Y REV. 43, 48 (2005). Important for our purposes is the observation that civic engagement is on the decline, no matter how it is defined.

7. DOWNS, *supra* note 5, at 70; OLIVER, *supra* note 4.

8. See, e.g., SMITH, *supra* note 2.

urbanist theories of design. Part V offers the conclusion that such an expansion will revitalize our inner cities while providing the richness and vibrancy of civic interaction needed to reverse America's decades-long slump in civic engagement.<sup>9</sup>

## II. A LONG, SLOW DECLINE: FROM THE 1960S TO TODAY

The decline in American civic engagement—voting, volunteering, trust in government, attendance at PTA meetings, and so on—is fairly well documented,<sup>10</sup> so I do not recapitulate the subject here. Instead, I draw out some themes from a variety of sources that discuss civic engagement in the context of city life.

Since the early 1960s, there has been a widespread decline in civic engagement in America. In 1960, 62.8% of voting-age Americans cast a ballot in the presidential election between John F. Kennedy and Richard Nixon. By the 1996 presidential race, despite relaxed restrictions on voter registration, the enfranchisement of millions of black Americans through the Voting Rights Act of 1965,<sup>11</sup> and the reduction of the voting age to 18 in 1972,<sup>12</sup> voter turnout dropped to 48.9% of voting-age Americans.<sup>13</sup> However, the decline in civic engagement has not been confined to participation at the national level. Between 1973 and 1993, participation at the community level dropped considerably. There was a 39% decrease in membership on local committees, a 35% decrease in attendance at public meetings on town or school affairs, and a 23% decrease in letters written to congressmen.<sup>14</sup> The decline did not only affect typical “political” involvement. Between 1975 and 1998, participation in informal social activities dropped as well. The number of times Americans entertain friends at home during a year has dropped by 45%, and Americans are almost 33% less inclined to make new friends.

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9. I do not present this Article or these policy solutions as a panacea to our nation's housing or civic engagement woes. As any serious student of policy knows, the causes and effects of these or any problems are myriad; a solution that addresses any element of the web leaves others untouched. I do, however, operate from an important empirical predicate: that increased civic engagement is possible only in a vibrant community, and that increased engagement will have positive effects on all aspects of American political life. Thus, while I do not pretend that these are the only issues facing our country, I do believe that this type of policy intervention will have significant effects in other areas of politics and policy.

10. Richard Sennett foreshadowed this decline and its implications on city life thirty years ago. See RICHARD SENNETT, *THE USES OF DISORDER: PERSONAL IDENTITY AND CITY LIFE* (1970). See also Gary Orren, *Fall From Grace: The Public's Loss Of Faith In Government*, in *WHY PEOPLE DON'T TRUST GOVERNMENT* 66 (Joseph S. Nye, et al. eds., 1997); PUTNAM, *supra* note 6.

11. 42 U.S.C. §§ 1973–73aa-6 (2000).

12. U.S. CONST. amend. XXVI.

13. PUTNAM, *supra* note 6, at 31–32.

14. *Id.* at 45.

Family bonds have also loosened, as the number of married Americans who report that their family usually eats dinner together has dropped by about 33%.<sup>15</sup>

Finally, recently-analyzed data suggest that the decline in social capital may be caused by yet another culprit: diversity. Robert Putnam, whose work is referred to throughout this Article, suggests that “[i]n the short to medium run, . . . immigration and ethnic diversity challenge social solidarity and inhibit social capital.”<sup>16</sup> Putnam’s analysis finds that two commonly-held theories are both equally wrong. First, he argues that the “contact theory,” which holds that increased inter-group contact increases social solidarity, is not supported by the data.<sup>17</sup> Second, he argues that “conflict theory,” which holds that increased inter-group contact decreases social solidarity and reinforces in-group bonds, is also unsupported.<sup>18</sup> Instead, Putnam’s latest study suggests that individuals in diverse communities exhibit greater distrust toward those who are like them *and* those who are different—specifically, that people in diverse communities “hunker down”<sup>19</sup> and withdraw from their in-group and their out-group alike, a phenomenon that Putnam (by way of a colleague of his) labels “constrict theory.”<sup>20</sup>

Whatever the cause, one thing is clear: there is a range of examples—social, political, personal, and otherwise—of the slow, steady, prolonged decline in “social capital” that began in the early 1960s and affects us to this day.<sup>21</sup> Similar trends can be seen in rates of civic and religious participation, volunteering, and reported levels of trust in the government, in the police, and in neighbors.<sup>22</sup> So serious is this decline that one observer argues that our ill civic health is the most important issue for the foreseeable future—more important than questions regarding government or the dynamics of our economy.<sup>23</sup> And while certain segments of society exhibit this trend more starkly than others, the decline in civic engagement has left no group—racial, social, or economic—untouched.<sup>24</sup> From political participation to civic

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15. *Id.* at 98–100.

16. Robert D. Putnam, *E Pluribus Unum: Diversity and Community in the Twenty-first Century: The Johan Skytte Prize Lecture*, 30 SCANDINAVIAN POL. STUDIES 137, 138 (2007).

17. *See id.* at 141–42 (citing authorities and discussing contact theory).

18. *See id.* at 142–43 (citing authorities and discussing conflict theory).

19. *See id.* at 149.

20. *See id.* (confirming hypothesis); *id.* at 144 (initially describing constrict theory).

21. PUTNAM, *supra* note 6, at 27.

22. *See generally id.*

23. DON D. EBERLY, AMERICA’S PROMISE: CIVIL SOCIETY AND THE RENEWAL OF AMERICAN CULTURE 218 (1998). I do, however, wonder if Eberly’s thoughts would be different today.

24. PUTNAM, *supra* note 6, at 27.

participation to religious participation to volunteering, the indicators all show the same thing: Americans are becoming increasingly disengaged from politics, from their communities, and from each other.<sup>25</sup>

The prevailing opinion during the 1960s and 1970s was that the suburbs would *increase* the sense of community among residents. Suburbs were supposed to provide an outlet from the “confusing” social environment of the city<sup>26</sup> and become “hotbeds of participation.”<sup>27</sup> Instead of getting lost in the concrete jungle of the city, residents of the suburbs would enter a market that caters to their tastes and encourages them to be active citizens. Yet this has turned out not to be true. In his seminal book on civic engagement and social capital, political scientist Robert Putnam stresses that central cities and suburbs are affected equally by the drop in civic disengagement: in the largest metropolitan areas, residents in cities and suburbs both report fewer group memberships, attend fewer club meetings, go to church less frequently, and are less likely to serve on committees.<sup>28</sup>

If cities and suburbs have fallen victim to this decline, are small towns the saving grace of American civic engagement? After all, when Alexis de Tocqueville visited this country and lauded its associations, “it was the America of little country towns that he had in mind.”<sup>29</sup> Should communities be rebuilt on the model of little country towns? Unfortunately today, even these communities are not immune to the decline in participation; in fact, “civic disengagement is perfectly visible in smaller towns and rural areas as yet untouched by sprawl.”<sup>30</sup>

Suburbanization, once thought to revitalize engagement, actually plays a significant role in the decline of civic engagement. In his chapter entitled, “Mobility and Sprawl,” Putnam emphasizes that the privatized lifestyle, the social and cultural alienation, and the personal isolation of the suburbs all have an isolating effect on civic life.<sup>31</sup> The increasing reliance Americans place on the automobile contributes even further to this isolation, as our lives “are increasingly traced in large suburban triangles, as we move daily from home to work to shop to home.”<sup>32</sup> And as the average number of people in an automobile decreases, people are

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25. *Id.* at 11.

26. SENNETT, *supra* note 10, at 70.

27. OLIVER, *supra* note 4, at 4.

28. PUTNAM, *supra* note 6, at 205.

29. Alan Ryan, *The City as a Site for Free Association*, in FREEDOM OF ASSOCIATION 314, 322 (Amy Gutmann ed., 1998).

30. PUTNAM, *supra* note 6, at 215.

31. *Id.* at 210.

32. *Id.* at 211.

not only driving more often, they are driving *alone* more often.<sup>33</sup>

Putnam attributes only ten percent of the overall decline in civic engagement to the suburbanization of American life. But there is reason to be suspicious of this number. Eric Oliver has recently called into question the “empirical basis” of Putnam’s claim (and others like it), pointing out that there is an “absence of knowledge” in this area.<sup>34</sup> For example, there is no consensus about “what exactly a ‘suburb’ is,” and the negative effects of suburbs are talked about only in vague terms.<sup>35</sup> Following his own statistical analysis, Oliver determines that suburban areas do in fact have a negative effect on democratic practices. Although he does not argue that they are inherently inimical to democracy, Oliver recognizes that government policy over the decades has created a situation in which the suburbs generally lack meaningful civic engagement.<sup>36</sup> Thus, there is reason to believe that Putnam’s “ten percent” figure actually understates the nature and extent of the relationship between civic engagement and suburbanization.<sup>37</sup>

33. *Id.* at 213.

34. OLIVER, *supra* note 4, at 2–3.

35. *Id.* at 2–4. As Oliver points out, “[a] protean term like ‘civil society’ can include activities as diverse as gathering informally with neighbors and going to the gym, and it is not clear that all such activities are either essential or beneficial for democratic governance.” *Id.* at 3 (citation omitted).

36. *See id.* at 5, 31, 188–90.

37. Another reason to be suspicious of Putnam’s figures, at least today, is that Putnam’s causal attributions hinge heavily on what he calls “generational replacement.” In other words, the biggest cause of disengagement is that highly engaged older people are being replaced with relatively disengaged younger people. *See* PUTNAM, *supra* note 6, at 248. There are, however, methodological concerns with Putnam’s data. They generally cover people who were born in the 1970s, and sometimes the late 1960s, unlikely candidates for today’s “youth.” *See, e.g., id.* at 252, 253, 259. Scott Beale calls today’s youth the “Millennial Generation”: people who were between the ages of four and twenty-four at the beginning of the year 2000. Beale’s “youth” were born between 1976 and 1996, a sample that cuts across Putnam’s various cohorts. *See* SCOTT BEALE & ABEER ABDALLA, *MILLENNIAL MANIFESTO: A YOUTH ACTIVIST HANDBOOK* (2003).

More important, this new sample of youth is arguably more civically engaged than any other generation. *See* ALLISON BYRNE FIELDS, *THE YOUTH CHALLENGE: PARTICIPATING IN DEMOCRACY*, CARNEGIE CORPORATION OF NEW YORK, 2002; Jois & Toppe, *supra* note 6; MARK HUGO LOPEZ, *VOLUNTEERING AMONG YOUNG PEOPLE*, CENTER FOR INFORMATION AND RESEARCH ON CIVIC LEARNING AND ENGAGEMENT, 2002. Even historically low rates of youth voting have turned up; in the 2004 election, nearly forty-five percent of youth between the ages of 18 and 29 voted, up from below thirty-five percent in 1996. *See* Lynne M. Casper & Loretta E. Bass, *Voting and Registration in the Election of November 1996*, U.S. CENSUS BUREAU, July 1998, available at <http://www.census.gov/prod/3/98pubs/p20-504.pdf> (Table 4. Reported Voting and Registration, by Selected Characteristics: November 1996); *Voting and Registration in the Election of November 2004*, U.S. CENSUS BUREAU (2005), <http://www.census.gov/population/www/socdemo/voting/cps2004.html> (Detailed Tables: Table 1. Reported Voting and Registration, by Sex and Single Years of Age: November 2004). If youth civic engagement is increasing, then “generational change” is a proportionately poor explanatory variable for civic disengagement. This gives yet another reason to believe that the factors Putnam considered to be relatively less important, including suburbanization, are relatively more important today.

Finally, diversity may have a role in all of this. Putnam’s recent data suggests that increased

Putnam's analysis is limited in part because his political science proceeds without a thorough discussion of political theory. Sure, certain indicators of engagement are rising or falling, but why? Not "why" in a statistical sense, but "why" in a philosophical sense: why should certain types of neighborhoods or relationships or activities bother us? Susan Bickford provides a theoretical backdrop in her study of cities' physical forms and their effect on citizenship. She finds that the "intersubjective relations currently being generated and entrenched" in the suburbs are "especially pernicious."<sup>38</sup> The suburbs are sterile and uniform, segregating people by race and class while draining much-needed resources from the inner cities.<sup>39</sup> Moreover, the suburban lifestyle cultivates practices that are "undemocratic internally and externally."<sup>40</sup> Another commentator characterizes patterns of suburban development as "not only an aesthetic disaster but a social and therefore a political one."<sup>41</sup> In short, over the past half-century, the suburban lifestyle has entrenched values that not only adversely affect the lives of suburban residents but also hamper the development of democracy.

Bickford's analysis recognizes the importance of the external environment on shaping people's political habits. The "built environment," she says, "shapes citizens' sense of what people, perspectives, and problems are present in the democratic public."<sup>42</sup> Her policy prescription flows from the recognition that the built environment has such an important effect on shaping citizens' worldview: we must "redesign[] the institutional context in which citizens' interactions and decisions take place."<sup>43</sup> Political theorist Bickford thus arrives at the same conclusion as political scientist Oliver: any revitalization of our politics will hinge on a redesign of our cities and suburbs.

This discussion of political theory is consistent with social psychological findings about how humans act and react. Although much

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diversity may decrease civic engagement and social capital. If this is true, the generational change may be even less helpful—though not totally useless—as a case of the decline in civic engagement. It should be noted, however, that Putnam himself does not think this is the case. E-mail from Robert D. Putnam, Peter and Isabel Malkin Professor of Pub. Policy, John F. Kennedy Sch. of Gov't, Harvard Univ., to Goutam U. Jois, Law Clerk to Hon. Mark L. Wolf, U.S. District Court for the District of Massachusetts, (Oct. 18, 2007, 10:03 EST) (on file with author) ("In any event, in my view [diversity] does nothing to diminish the strong evidence that generational change is a major factor in the long civic decline (and the long rise before that).").

38. Susan Bickford, *Constructing Inequality: City Spaces and the Architecture of Citizenship*, 28 POL. THEORY 355, 356 (2000).

39. *Id.* at 358.

40. *Id.* at 359.

41. Ryan, *supra* note 29, at 324.

42. Bickford, *supra* note 38, at 356.

43. *Id.*



law and policy, particularly in America, is (implicitly or explicitly) built on the “rational actor model,” this view of the human animal turns out to be systematically flawed. Instead of making choices based on stable preferences, recent science shows that people are influenced, to a significant extent, by their internal situation (cognitive biases, heuristics, and so forth) and external situation (the world around them).<sup>44</sup> People can and do choose to vote, volunteer, or be engaged in local politics. However, it is equally if not more important that the external environment shapes their views on these issues. Perhaps most important, the external situation is not static: it can and must be redesigned.<sup>45</sup>

Oliver makes this point emphatically. Following an empirical analysis, Oliver concludes that although “suburbanization is undermining the optimal functioning of America’s local democratic institutions,”<sup>46</sup> it has its benefits too: “suburbanization fosters community, involves citizens in local affairs, and promotes civic engagement.”<sup>47</sup> However, the most important finding from Oliver’s study (critical if the suburbs are to realize their potential) is “the often overlooked role of social contexts and institutions in civic life.”<sup>48</sup>

Just as Professor Jon Hanson and his co-authors reject the rational actor model in economics and in law, so too does Oliver reject it in the context of civic participation:

[A]s valuable as national survey samples and mathematical models of “rational actors” may be, these styles of research inadvertently promote a distorted picture of isolated citizens making choices completely independent of their surroundings. Citizens . . . live in distinctive social

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44. See generally Jon D. Hanson & David Yosifon, *The Situation: An Introduction to the Situational Character, Critical Realism, Power Economics, and Deep Capture*, 152 U. PA. L. REV. 129 (2003) [hereinafter *The Situation*]; Jon D. Hanson & David Yosifon, *The Situational Character: A Critical Realist Perspective on the Human Animal*, 93 GEO. L.J. 1 (2004) [hereinafter *The Situational Character*]. Instead of “rational actors,” Hanson and his coauthors argue that we are instead “situational characters,” subject to influence and manipulation. The obvious corollary of this position is that creating “situations” conducive to participation and engagement will have a positive effect on these outcomes. The less-obvious corollary is that the entities that control our situation wield tremendous influence over our lives. When those entities—housing authorities, mortgage financiers, residential developers, and others—play a significant role in constructing our physical space, we should be especially critical. If the built environment affects how we interact with each other, indeed, affects the vitality of our very democracy, then the prospect of what Hanson and his co-authors call “deep capture” can have especially pernicious effects, not only in civic engagement but in law and in politics more broadly.

45. Moreover, just as the external environment affects the “choices” people make about participation and politics, it is also true that policies affect the “choices” people make about where to live.

46. OLIVER, *supra* note 4, at 5.

47. *Id.* at 188.

48. *Id.* at 189.

and institutional contexts, contexts that are important determinants of their behavior.<sup>49</sup>

In short, civic participation is affected in significant part by the citizen's situation. That situation, in turn, is affected in significant part by local governments and the way that they structure local and sub-local institutions.<sup>50</sup>

As argued below, policymakers must redesign the citizen's situation to be heterogeneous, inclusive, and egalitarian. As Oliver notes, the suburbs themselves might not be *per se* detrimental to participation, but their context and structure almost certainly are. Over time, municipalities have used their political autonomy "to create distinctive types of communities that are highly singular in their economic and racial composition and their types of land use."<sup>51</sup> The suburbs, Oliver writes, embody "political fragmentation and institutionalizing of social differences among residents of a common metropolitan area."<sup>52</sup>

This segregation has deleterious effects for participation. Local institutions and policies

determine who can afford to live in a community, how many people it will contain, and what types of public policies it will pursue . . . . If a community is structured in such a way that it generates little internal conflict or seeks nothing more than to maintain a set of policies that most residents agree with, then it provides little motivation for citizens to become civically active.<sup>53</sup>

Diversity, then, is an integral part of a vibrant civic life. If this is the case, then it is even more important to create communities that cut across social, economic, and racial lines.

The idea that homogeneity is detrimental to civic life is nothing new.

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49. *Id.*

50. *Id.* at 189–90. Oliver uses this argument to point out that the suburbs can be redesigned in such a way as to tap into their potential to revitalize civic life. I do not take issue with his conclusion directly. My claim is slightly different: that given (among other things) limited resources, our efforts, at least on a first cut, are better spent on the inner cities. Indeed, even Oliver acknowledges that "[t]he most civically active municipalities are ones that combine the intimacy of a small town and the social diversity of a large city." *Id.* at 31. The neighborhood-level participatory associations I propose later in this Article are designed precisely to create "the intimacy of a small town" in an urban environment. And while Oliver focuses on the suburbs, he nonetheless acknowledges that the current suburban institutional context is one that is not conducive to participation. *See, e.g., id.* at 31 (discussing "suburban civic malaise").

51. *Id.* at 190.

52. *Id.*

53. *Id.*

For example, Richard Sennett, who has written about such topics for decades, titles his book “The Uses of Disorder,” and argues that American suburbs lack the characteristic diversity of urban centers and therefore stunt the development of civic life.<sup>54</sup> However, recent social psychological evidence shows that homogenous groups are not only prone to passivity; they are prone to extremism. A very robust finding in the literature is that “like-minded people tend to go to extremes.”<sup>55</sup> Moreover, when an individual holding one position is faced with a near-unanimous group in opposition, he is likely to yield to the majority’s views and silence himself.<sup>56</sup> To the extent we believe that extremism is, on average, harmful, and to the extent we believe that self-censorship in the face of divergent opinions is, all else equal, bad, homogenous communities must be bad for democracy. They must be bad, not only for the theoretical reasons cited by Oliver above, but also because humans are cognitively “hard-wired” to act in ways that reduce or even eliminate meaningful political participation.

Again, however, it is important to note Putnam’s latest findings regarding diversity. In this Article, I call repeatedly for a heterogeneous redesign of the urban environment. However, Putnam suggests that highly-diverse areas, and in particular contemporary American cities, score low on measures of social capital.<sup>57</sup>

Yet I believe that there is reason to think, Putnam’s analysis notwithstanding, that an urban redesign that focuses on diversity is needed. First, Putnam’s study does not take into account the empirical data demonstrating that homogenous groups tend to go to extremes. Arguably, high levels of social capital (such as are found in relatively homogenous communities) are not desirable if accompanied by a concomitant movement, on average, toward political extremes. Second, as Putnam himself recognizes,<sup>58</sup> the urban environment is more conducive to civic engagement than the suburban environment. Taken together, these suggest that the problem in developing social capital is not with diverse urban area per se; rather, it is that citizens’ sense of their in-group is narrower, on average, in those areas. However, as Putnam

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54. See GERLAD FRUG, *CITY MAKING: BUILDING CITIES WITHOUT BUILDING WALLS* (1999). See generally SENNETT, *supra* note 10.

55. Cass R. Sunstein, David Schkade, & Lisa Michelle Ellman, *Ideological Voting on Federal Courts of Appeals: A Preliminary Investigation*, 90 VA. L. REV. 301, 308–09 (2004) (citing ROGER BROWN, *SOCIAL PSYCHOLOGY: THE SECOND EDITION* 203–26 (1985)); see also Robert S. Barron, et al., *Social Corroboration and Opinion Extremity*, 32 J. EXPERIMENTAL SOC. PSYCHOL. 537 (1996).

56. See, e.g., Solomon E. Asch, *Opinions and Social Pressure*, in READINGS ABOUT THE SOCIAL ANIMAL 13 (Elliot Aronson ed., 1984).

57. See generally Putnam, *supra* note 16.

58. See PUTNAM, *supra* note 6, at 93.

points out, that sense of in-group can, and does, change over time.<sup>59</sup> Neither suburbanism nor homogeneity is necessary conditions, then, for civic engagement.

America is five decades into a long, steady decline in civic engagement by virtually all measures. This phenomenon has manifested itself in cities as well as suburbs, in large metropolitan areas and in little country towns. Why, then, should our policies focus on cities (rather than suburbs or rural areas) to address the issue of civic engagement?

### III. AN OPPORTUNITY LOST, AN OPPORTUNITY REGAINED: AMERICA'S URBAN CENTERS

Andres Duany, Elizabeth Plater-Zyberk, and Jeff Speck are some of the earliest exponents of the new urbanist school of urban design. In their classic book on city planning, they point out that “it is important to remember that America’s inner cities did not wither all at once, or by chance. For much of the twentieth century, they have suffered from the consequences of government policy and urban planning.”<sup>60</sup> Anthony Downs, a political scientist who wrote a highly-regarded book on the subject of metropolitan life, echoes this point, writing that “urban growth and decline are caused primarily by local government fiscal policies, *not* by high rates of poverty or other urban social or economic conditions.”<sup>61</sup> A few of the more salient examples of such policies include the clearing of homes to “revitalize” downtown business districts and the construction of highways through old neighborhoods.<sup>62</sup>

Even seemingly unrelated legal decisions have significant (and inequitable) impacts on cities and low-income communities. When a toxic chemical spill occurred near Chicago, Judge Richard Posner of the Seventh Circuit wrote the opinion finding no liability on the part of the shippers. In doing so, he wrote: “Brutal though it may seem to say it, the inappropriate use to which land is being put in the Blue Island yard and neighborhood may be, not the transportation of hazardous chemicals, but residential living. The analogy is to building your home between the runways at O’Hare.”<sup>63</sup> But is the analogy apt? As Jon Hanson and Adam Benforado point out, Posner’s reasoning is blind to the external situation.

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59. See Putnam, *supra* note 16, at 159–65 (citing examples of religious, ethnic, and racial barriers being eroded over time in the United States).

60. ANDRES DUANY, ELIZABETH PLATER-ZYBERK, & JEFF SPECK, *SUBURBAN NATION* 153 (2000).

61. DOWNS, *supra* note 5, at 77 (emphasis added).

62. See, e.g., CARL ABBOTT, *THE NEW URBAN AMERICA* 238 (1981).

63. *Ind. Harbor Belt R.R. Co. v. Am. Cyanamid Co.*, 916 F.2d 1174, 1181 (7th Cir. 1990).

In all likelihood, the residents did not choose to live near a railway switchyard; instead, their finances, imperfect information, and government policies may have all conspired to make it effectively impossible to move out.<sup>64</sup> Seemingly subtle differences in housing policy, then, can have remarkably vivid (and pernicious) impacts on people's lives even in fields as far-flung as tort liability.

The problems in these neighborhoods extend beyond housing. Among other things, housing difficulties make it nearly impossible for a vibrant civic life to take root. An analogy is appropriate. In the immediate aftermath of Hurricane Katrina, two emergency medical services workers were trapped in New Orleans with a group of residents. Time and again, they found that when individuals lacked basic necessities, violence and strife increased:

When individuals had to fight to find food or water, it meant looking out for yourself. You had to do whatever it took to find water for your kids or food for your parents. But when these basic needs were met, people began to look out for each other, working together and constructing a community.<sup>65</sup>

Although the Katrina example is not quite analogous to the affordable housing crisis in the United States, the fundamentals are the same: individuals cannot “work[] together and construct[] a community” if their basic needs, including housing, are not met. Conversely, it is only by addressing the nation's housing problems that we can meaningfully improve our collective civic health.<sup>66</sup>

The racial segregation in today's inner cities is yet another example of the detrimental effects of policy.<sup>67</sup> In this case, divided neighborhoods

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64. Adam Benforado & Jon Hanson, *Symposium: Calabresi's Costs of Accidents: A Generation of Impact on Law and Scholarship: The Costs of Dispositionism: The Premature Demise of Situationist Law and Economics*, 64 U. MD. L. REV. 24, 41 (2005).

65. *The Real Heroes and Sherries of New Orleans*, SOCIALIST WORKER, Sept. 9, 2005, at 4.

66. On the other hand, the Katrina example may not be all that far from the mark. The rebuilding process has drawn in many urban theorists who propose rebuilding New Orleans along New Urbanist lines. The New Urbanist designs would not only be much more effective than conventional designs in protecting sensitive open space from flooding and preventing watersheds; they would bridge socioeconomic divides and enhance urban living. However, these achievements are dependent on “effective local implementation of planning practices.” Strong local participation in this planning will help build a sense of community because residents will feel increased commitment to and control over the policy proposals as they work together to reconstruct their city. Philip R. Berke & Thomas J. Campanella, *Planning for Postdisaster Resiliency*, 604 ANNALS OF AM. ACAD. OF POLI. & SOC. SCI. 192 (2006).

67. Others have documented this phenomenon elsewhere. See, e.g., DOUGLAS S. MASSEY & NANCY A. DENTON, *AMERICAN APARTHEID: SEGREGATION AND THE MAKING OF THE UNDERCLASS* (1993); Nancy A. Denton, *The Role of Residential Segregation in Promoting and Maintaining Inequality in Wealth and Property*, 34 IND. L. REV. 1199 (2001); Richard T. Ford, *The Boundaries of*

did not evolve solely due to individuals' malevolent racism or even their neutral "choices." Instead, "these behaviors have been *and continue to be* supported by institutional practices and policies" ranging from loan assessments to unenforced fair housing laws.<sup>68</sup> Moreover, without some sort of intervention, the situation will continue into the foreseeable future. Poverty breeds crime, ignorance, and poor health; ultimately, the "downward spiral in quality of life perpetuates itself."<sup>69</sup> In other words, the deterioration of our cities has not been a matter of chance or even of *laissez-faire* market mechanisms. Problems exist today because of governmental policy; they must be solved *through* government policy. "The fact that policy and planning can be blamed for our cities' problems is actually encouraging—it implies that better policy and better planning can produce better cities."<sup>70</sup>

Examining the decline in civic engagement generally and the deterioration of cities particularly helps illuminate the question of why policy efforts should be directed toward cities and not elsewhere. A perhaps-obvious claim can be constructed ethically: if society as a whole has contributed to the decline of urban America, society as a whole ought to take responsibility for fixing urban America. Thus, Downs contends that all Americans have a "direct moral responsibility" to help solve inner city problems.<sup>71</sup> However, translating that moral responsibility into sound public policy requires political action, and Downs himself concedes that the political will to do so is weak. Suburbanites who hold political power are loath to spend their resources on inner cities, the poor, or racial minorities;<sup>72</sup> the confluence of all three triply damns urban America to the bottom of mainstream America's political priorities.

Furthermore, as described above, civic engagement is low in suburban *and* urban localities. And "the same forces that have successfully produced the suburban American dream of single-family homes, two cars in every garage, and a better life have left many of the poor behind in central-city isolation."<sup>73</sup> This observation leads to two important implications. First, even policies that are not directly focused on cities (such as suburban development, highway policy, and mortgage subsidies) have profound impacts on urban America. Second, and more important, is the seemingly "zero-sum" relationship between our cities

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*Race: Political Geography in Legal Analysis*, 107 HARV. L. REV. 1843 (1994) (describing the relationship between political boundaries and racial division).

68. Bickford, *supra* note 38, at 360 (emphasis added).

69. DOWNS, *supra* note 5, at 60–61.

70. DUANY ET AL., *supra* note 60, at 154.

71. DOWNS, *supra* note 5, at 93.

72. *Id.* at 91–92.

73. *Id.* at 60.

and suburbia: the gains of the latter have necessarily been at the expense of the former. One might even argue that the suburbs are responsible for the cities' decline.

Demonstrating the suburbs' responsibility for the decline of inner cities might strengthen the moral case, but the problem of political will still exists. Yet there are several practical arguments to explain how (and why) revitalizing the inner cities is in the interest of suburban America. First and most simply, suburbs are not isolated, autonomous entities; "the belief among suburbanites that they are independent of central cities is a delusion."<sup>74</sup> While suburbs are not as dependent on cities as they may have been a century ago, cities nonetheless provide many needed services. They facilitate face-to-face contacts, provide specialized activities and facilities, serve as hubs for area networks, and have historically offered low-income housing. In addition, cities often house central institutions such as universities, businesses, hospitals, legislatures, governmental offices, and others. Suburban residents are vitally dependent on these facilities; moving them to the suburbs is unfeasible and cost-prohibitive.<sup>75</sup>

Moreover, policy ought to focus on cities because the suburban lifestyle is not conducive to building bonds and increasing civic engagement. Putnam writes of a suburban "culture of atomized isolation, self-restraint, and 'moral minimalism.'"<sup>76</sup> Duany and Plater-Zyberk call suburbs "the last word in privatization, perhaps even its lethal consummation," "spell[ing] the end of authentic civic life."<sup>77</sup> In other words, while the decline in civic engagement is occurring in cities and suburbs, sometimes even because of the same policies, the causes for disengagement do not entirely coincide. Urban centers have been hurt by governmental policy, while the suburbs suffer from both policies that inhibit social capital as well as a *lifestyle* that is particularly antithetical to association. The urban lifestyle, on the other hand, is actually conducive to fostering civic engagement. As discussed below,<sup>78</sup> the

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74. *Id.* at 52.

75. *Id.* at 52–55. While it is cost-prohibitive to move the *institutions* to the suburbs, it is certainly possible to redesign suburban areas to serve as networking hubs, facilitate face-to-face contact, and so on.

76. PUTNAM, *supra* note 6, at 210. *But see* OLIVER, *supra* note 4, at 188 ("Many of the . . . distinguishing characteristics of suburbs that are often believed to stifle civic activity, such as the structure of their political institutions and the nature of their land use, actually have little influence[, as an empirical matter,] on their residents' civic behavior," and, that even plausible theories are "largely speculative.").

77. PUTNAM, *supra* note 6, at 210 (quoting Andres Duany & Elizabeth Plater-Zyberk, *The Second Coming of the American Small Town*, *Wilson Quarterly*, Winter 1992, 19, available at <http://www.walkablestreets.com/duany.htm>).

78. *See infra* notes 83–88 and accompanying text.

urban environment fosters face-to-face interaction, formal equality, and opportunities for engagement in a way that the suburbs simply cannot and do not.<sup>79</sup>

The final reason for focusing on the cities also relates to the decline in civic engagement. Even Putnam, who argues that the decline in civic engagement equally affects cities and suburbs, acknowledges that “social filaments linking residents were steadily regenerated” in cities and that cities sustain “a mosaic of loosely coupled communities.”<sup>80</sup> For people to organize in groups and improve their communities’ civic engagement, “they must associate with each other in natural and unforced ways from which their political [and civic] associations can spring.”<sup>81</sup> City life easily provides this natural and unforced interaction in a way that suburbs simply cannot. In Duany, Plater-Zyberk, and Speck’s pithy words, “there is a significant difference between running into someone while strolling down a street and running into someone when driving a car.”<sup>82</sup> Thus, efforts should be focused on cities because they hold inherent promise for reviving social capital in our country. But why is this the case?

Alexis de Tocqueville, over one hundred fifty years ago, noted that Americans considered each other *equal in condition*, and that this equality spurred Americans’ formation of associations.<sup>83</sup> This “social democracy,” in which there is (at least nominally) equality among citizens, is more present in the city than in the suburbs. I call this phenomenon “formal equality.” The modifier is important: the equality is in form only. Wide disparities in income, residence, and other social factors exist among urban residents. Nonetheless, a working-class woman and a white-collar professional (so long as they live in the same neighborhood) have to walk on the same streets, buy food at the same grocery stores, and go to the same shops, restaurants, and movie theaters.<sup>84</sup> They take the same subway lines and hail cabs from the same corner. Their children might go to the same school, or at least pass each other on the way to the different schools. The two may have nothing in

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79. There are exceptions, but upon closer inspection, these exceptions oftentimes prove the rule. The suburbs with a vibrant civic life in fact do have walkable main streets, open public spaces, and identifiable “downtowns.” They create hubs for social interaction and encourage pedestrian traffic. In short, they replicate the very qualities that make the cities conducive to civic engagement.

80. PUTNAM, *supra* note 6, at 96.

81. Ryan, *supra* note 29, at 318.

82. DUANY ET AL., *supra* note 60, at 62 (citations omitted).

83. SENNETT, *supra* note 10, at 41.

84. The notable exception is if the two do not live in the same neighborhood. Thus, the policy prescription at the close of this Article is for mixed-income, mixed-use zoning, so that people of different incomes *would* live in the same neighborhood.



common as a matter of substance, but their lives intersect in myriad ways as a matter of form. Of course cities are segregated by race and class, and of course the professional and the working-class woman may live in entirely separate worlds as a matter of lived experience. But the formal equality that the city provides would, nonetheless, seem to provide intangible social benefits.

That possibility is supported by an empirical study. In 2002, Alistair Smith published a study on mixed-income developments. In it, he found that such developments—in precisely the type of place where we would expect to see this kind of interaction—have the potential for solving the problem of political will. Mixed-income developments, he wrote, have the potential to “link support for those with the greatest needs to those with more moderate needs” (in his discussion, those with incomes up to \$54,000 per year).<sup>85</sup> Additionally, Smith noted that the public’s perception of affordable housing improves when it occurs in the context of a mixed-income development;<sup>86</sup> images of the failed public housing projects of the 1970s do not come to mind and opposition to the project is diminished. In short, when communities are mixed-income in character, higher and lower income residents are more likely to feel that they are “in it together,” and political opposition is lower.<sup>87</sup>

Mixed-income neighborhoods, then, can facilitate a facial equality that is simply not present in the exclusive, often gated, communities of the suburbs.<sup>88</sup> And we should not take this concept of “gates” too literally: as Bickford points out, “gates” take a variety of forms, “from an impenetrable wall to a simple mechanical arm, from barbed wire surrounding a housing project to red lines on a city map.”<sup>89</sup> Literal or metaphorical, these gates all serve the same purpose: to keep away those who are considered different, partitioning the public realm into smaller and smaller pieces until there is no public realm left of which to speak.<sup>90</sup>

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85. SMITH, *supra* note 2, at 35.

86. *Id.* at 36.

87. *Id.* at 35. See *infra* note 128 and accompanying text for a discussion of the trouble with the large, institutionalized house projects of the 1960s and 70s.

88. Bickford, *supra* note 38, at 359.

89. *Id.* at 361.

90. The privatization of public space and the attendant problems of such a phenomenon have been extensively chronicled elsewhere. See, e.g., RICHARD SENNETT, *THE FALL OF PUBLIC MAN* (1977) (chronicling the erosion of public life); Don Mitchell, *The End of Public Space? People’s Park, Definitions of the Public, and Democracy*, 85 ANNALS OF THE ASS’N OF AM. GEOGRAPHERS 108 (1995) (criticizing a view of “the public” that includes businesses as being inimical to democracy); Jason K. Levine, *Defending the Freedom to be Heard: Where Alternate Avenues Intersect Empty Public Spaces*, 36 U. MEMPHIS L. REV. 277, 279 (2002) (“The modern era has seen privately owned spaces become a substitute for the traditional spaces used by the public”); Robyne S. Turner, *The Politics of Design and Development in the Postmodern Downtown*, 24 J. URB. AFF. 533, 533 (2002) (arguing that public space in urban downtowns is increasingly privatized). The need

Whether they are cordoning off low- or high-income neighborhoods, these divisions serve the same purpose: to create homogenized peer groups in which people have little to no interaction with those considered “different.”<sup>91</sup> This, too, adversely affects civic participation: “‘peer groups’ of similar age and background . . . discourage[] any idea of participating in larger political mechanisms or even in larger coordinated voluntary movements.”<sup>92</sup> People in these segregated areas increase their alienation both from society and from other groups of people;<sup>93</sup> as homogeneity in a given group increases, so does the perception of threat from those who do not fit the group’s mold.<sup>94</sup> Conversely, with increased diversity comes increased parity between groups ideologically, politically, and financially.<sup>95</sup>

Thus, cities offer more potential for diverse activity, and a wide variety of scholars agree that this diversity is normatively desirable. Richard Sennett writes that cities where people confront each other regularly reconstitute public power.<sup>96</sup> His call for a “functional dislocation and a jumble of concurrent events and peoples inhabiting common ground” is a call to realize the multifaceted nature of the city, to embrace it, and to understand its potential for public power and purification of identity.<sup>97</sup> Similarly, Putnam frames his entire book in the context of social capital, the networks between people that give our society a sense of vitality.<sup>98</sup> These types of networks are far more prevalent in cities than in the suburbs. As Sennett put it, the “most direct way to knit people’s social lives together [i.e., to create social capital] is

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for public space has been recognized in the case law as well. *See* Int’l Soc. for Krishna Consciousness, Inc. v. Lee, 505 U.S. 672, 696 (1992) (Kennedy, J., concurring in the judgment) (“At the heart of our jurisprudence lies the principle that in a free nation citizens must have the right to gather and speak with other persons in public places”).

91. *See generally* Mitchell, *supra* note 90.

92. GEORGE C. S. BENSON, *THE POLITICS OF URBANISM: THE NEW FEDERALISM* 94 (1972).

93. ABBOTT, *supra* note 62, at 211.

94. Bickford, *supra* note 38, at 364. The observation that the mere fact of grouping otherwise-dissimilar entities increases perceptions of similarity within groups and difference between groups is well documented. Additionally, one’s own group is seen as superior and other groups inferior. This “group-affirming motive” is an inherent human tendency, but the groups that prime that motivation are not; they can be, and are, constructed and often arbitrary. *See* Susan T. Fiske & Shelley E. Taylor, *SOCIAL COGNITION* 80–81 (1991) (“The tendency of in-group members to attribute internal causes to positive in-group behavior and negative out-group behavior and to attribute negative in-group behavior and positive out-group behavior to external causes”); *The Situational Character*, *supra* note 44, at 100 (summarizing findings about the group-affirming motive).

95. JULIET F. GAINSBOROUGH, *FENCED OFF: THE SUBURBANIZATION OF AMERICAN POLITICS* 96 (2001).

96. SENNETT, *supra* note 10, at 141.

97. *Id.* at 142.

98. PUTNAM, *supra* note 6, at 27.

through necessity, by making men need to know about each other in order to survive . . . . The city can provide a unique meeting ground for these encounters.”<sup>99</sup> This is precisely the type of “social democracy” that Tocqueville observed a century and a half ago.

More explicitly, Ryan says that free association, both politically and socially, is one of the “cultural benefits of urban living . . . . [T]he city is the first home of politics.”<sup>100</sup> Bickford agrees, citing the ancient Greek *poleis* as some of the first sites of city life, featuring “density, diversity, publicity, cultural vitality, and political power.”<sup>101</sup> In the modern context, she writes that cities

literally bring[] people together in a variety of ways through their daily experience [in a way that] makes a difference in how they think politically—not in terms of the content of opinions, but in terms of the awareness of different perspectives that must be taken into account in forming opinions.<sup>102</sup>

A multitude of diverse experiences are the “essence of urban life,” making possible the complex experience of city dwellers.<sup>103</sup> In other words, the diversity of our cities is not an end in itself. Rather, this diversity is what gives richness to the interactions between citizens and is one of the defining characteristics of a city’s public realm.

In short, both cities and suburbs have suffered from a decline in civic engagement, but like effects did not stem from like causes in this case. While the suburban *lifestyle* is inimical to engagement and participation, government policies decimated communities in our cities. While the suburbs (and today’s ill-defined “exurbs,” whatever they might be) encourage isolation, the city is intrinsically a place of interaction, complexity, and reciprocity. The city is intrinsically a place of possibility.

#### IV. AFFORDABLE HOUSING AND THE REBIRTH OF AMERICAN CITIES

If this Article were merely about focus—whether we should concentrate our efforts in the suburbs or in cities—the analysis might be complete. Part II chronicled America’s decline in civic engagement, focusing especially on the pernicious effects of suburban life on

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99. SENNETT, *supra* note 10, at 139.

100. Ryan, *supra* note 29, at 315.

101. Bickford, *supra* note 38, at 355.

102. *Id.* at 370.

103. SENNETT, *supra* note 10, at 82.

participation. Part III surveyed the decline in America's cities and showed that, while our urban centers are in decline, they are inherently better situated to foster engagement than suburbs. Thus, we should fight civic disengagement by focusing on cities.

But this Article is not only about priorities; it is also about policy. The beginning of this Article outlined the ways in which our inner cities are deteriorating. Downs goes so far as to say that many inner cities are "not even neighborhoods in the sociological sense because they lack the mediating institutions found in other communities."<sup>104</sup> It now remains to evaluate options for (re-)building these neighborhoods and then to judge the effectiveness of these projects at remedying the ills of civic engagement.

Duany, Plater-Zyberk, and Speck contend that we must think about the city in comparison to its suburban competition. Specifically, the amenities that the suburbs offer (tennis courts, private yards, golf courses) have to be countered with some similar amenities in the cities—and "the most significant amenity that the city can offer potential residents is a *public realm*, with the vibrant street life that phrase implies."<sup>105</sup> Bickford defines the public realm as "a nonstate arena of communicative interaction, a central space of opinion formation."<sup>106</sup> Sidewalks, parks, community centers, and even the local bar are all examples of the public realm, and as we have seen before, cities provide the possibility for this "communicative interaction" better than any other region.<sup>107</sup> It is such a public realm that a community needs for its very existence, for without that space, community would literally have no room in which to develop. "Just as it is difficult to imagine the concept of *family* independent of the home, it is near-impossible to imagine *community* independent of the town square or the local pub."<sup>108</sup> However, as our cities decline, so too do the public realms that these cities offer. Therefore, we must rebuild our cities, focusing on the rejuvenation of public realms that will promote interaction.

The most important aspect to this public space interaction that we

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104. DOWNS, *supra* note 5, at 72.

105. DUANY ET AL., *supra* note 60, at 156.

106. Bickford, *supra* note 38, at 356.

107. DUANY ET AL., *supra* note 60, at 60. It is important to note that the public realm need not be "public," that is, owned by the state. It must, however, be an area generally thought of as open to all. This is why, although legally private entities can create "public space," recent trends toward privatization are not heartening: first, because these private entities can and do exercise their right to exclude, and second, because courts have held that the obligations that fall on public actors do not fall on private actors, even when they may hold themselves out as open to the "public." *See, e.g., Lloyd Corp. v. Tanner*, 407 U.S. 551 (1972) (holding that a public shopping mall could suppress free speech because the mall was a private, not a public, actor).

108. DUANY ET AL., *supra* note 60, at 60.

need to foster is that it must not be forced. Telling people to go to a specific café and discuss politics in order to promote political awareness is a fatally flawed strategy; placing a café in the middle of a common shopping center or town square will likely be more effective.<sup>109</sup> “People who meet in the café are then likely to be drawn into conversation, and to discover that they do (or do not) have shared interest, shared political opinions, or whatever else.”<sup>110</sup> But cafés are not the answer in and of themselves; the key to creating a vibrant public realm is variety. Duany, Plater-Zyberk, and Speck write that street life in the city should be a twenty-four-hour affair, with shopping, eating, socializing, and working all mutually reinforcing each other.<sup>111</sup>

This statement has a very important converse: if we do not create such a twenty-four-hour affair, the likelihood of the meaningful interactions described earlier is far less. Building certain types of space will not necessarily make people interact meaningfully. However, without such space, we can virtually guarantee that those interactions will not take place, as the example of suburban America indicates. “[J]ust as the construction of social space makes certain interactions rare, so can it create and foster better interactions—ones better for a democratic polity.”<sup>112</sup>

Duany, Plater-Zyberk, and Speck state confidently that “[u]rban revitalization must begin, then, by reinstating the balance among the widest range of local uses.”<sup>113</sup> This bold statement is more complicated than it first seems. What areas of the city will be “revitalized”? Who will take the lead in the revitalization? Will this help or hinder civic participation in this country? These questions are the focus of the balance of this Article.

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109. This strategy is analogous to a variety of intervention strategies used by groups to foster positive social outcomes. The Search Institute, a nonprofit organization that works to support children and communities, has developed a research-based framework of “40 Developmental Assets” that promote positive, healthy child rearing. These “concrete, common sense, positive experiences and qualities” are designed, in essence, to encourage the kind of situations that generate positive child development. *Introduction to Assets*, THE SEARCH INSTITUTE, <http://www.search-institute.org/assets/> (last visited February 2, 2007). The YMCA DC Youth & Government Program, which seeks to get youth involved in politics and in their communities, similarly seeks to put young people in the kinds of situations where they will develop the characteristics of a highly engaged citizen, all without once telling its participants to vote or volunteer. Again, the program encourages the kinds of situations that foster youth civic engagement. See Goutam U. Jois, Paper Presentation, *Civic Engagement Among American Youth: Research, Activism, and Democracy*, Association for Research on Nonprofit Organizations and Voluntary Associations (November, 2005), [http://works.bepress.com/goutam\\_jois/7](http://works.bepress.com/goutam_jois/7).

110. Ryan, *supra* note 29, at 323.

111. DUANY ET AL., *supra* note 60, at 156.

112. Bickford, *supra* note 38, at 371.

113. DUANY ET AL., *supra* note 60, at 156.

### A. *Affordable Housing and the New Urbanism*

The regions most in need of rebuilding today are those where civic engagement is lowest. People in those areas feel no connection to their local government, which has failed them for decades on end.<sup>114</sup> Thus a governmental initiative will probably fail not only given empirical history (as Downs points out) but also because the people in those areas will just not be receptive to anything the government has to offer. Partnering these enterprises with private industries will provide a “new face” to inner-city residents and offer market incentives to those involved to do the job well. Indeed, conflict in planning is mitigated when “businesspeople learn that coming to agreement with the affected community is the shortest route to reaching their goals.”<sup>115</sup>

But what would these public-private partnerships do? Saying they will “creat[e] a viable public realm” is one thing; specifying how to do so is another thing entirely. Here, more than anything else, an intelligent affordable housing plan and smart development are critical.

#### 1. *The problem today*

In general, the problem with affordable housing is simple: there is not enough of it. A recent study by the Joint Center for Housing Studies of Harvard University reported that 12.1 million of all households—roughly one in eight households—were paying more than half of their income in rent, a level that is considered “severely cost-burdened.”<sup>116</sup> Housing costs put such a strain on these households that they face “hardship in paying for other needed goods and services.”<sup>117</sup> According to another study, there are nearly one hundred million people in the United States “who lack safe, decent, and affordable housing. Housing problems are twice as prevalent as lack of health insurance and affect three times more people than does food insecurity.”<sup>118</sup> Perhaps most unsettling, this crisis developed at a time when “[t]he housing industry [was] the strongest sector of the American economy.”<sup>119</sup>

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114. BENSON, *supra* note 92, at 93. There is no better recent example of this phenomenon than the aftermath of Hurricane Katrina. It will be interesting to see how successful the redevelopment efforts will be, given the disconnect between the citizenry and their elected representatives.

115. JEFFREY M. BERRY, KENT E. PORTNEY, & KEN THOMSON, *THE REBIRTH OF URBAN DEMOCRACY* 157 (1993).

116. SMITH, *supra* note 2, at 12.

117. *Id.*

118. AMERICA’S NEIGHBORS, *supra* note 3, at 16.

119. *Id.*

There are regional variations. In Tulsa, Oklahoma, for example, a family of three earning about fifty percent of the area median income (AMI) could afford a two-bedroom apartment at the region's median rent without being cost-burdened (meaning their housing costs equaled or were less than thirty percent of income). To afford that same apartment in Boston, however, the family would have to earn at least seventy percent of the AMI, while the family would have to have an income that exceeded seventy-eight percent of AMI in New York and eighty percent of AMI in Los Angeles. Illustrating the differences across regions, however, a three-person family could earn just fifty-eight percent of AMI in Dallas and fifty-three percent of AMI in Chicago and still afford the apartment without being cost-burdened.<sup>120</sup>

Nonetheless, these regional variations should not detract from the national scope of the problem. While housing might be more of a concern in some places than in others, the regional differences are ones of degree, not kind.<sup>121</sup> Housing is the largest expense that most Americans face, at all income levels.<sup>122</sup> Even those who tout the success of federal efforts to combat the housing crisis acknowledge that “[f]or many poor households, . . . federal efforts have been less than successful. [For these households, t]he most significant housing challenge is affordability, growing in severity as family incomes move down the ladder.”<sup>123</sup> As the table below shows, severe housing cost burdens are borne in disproportionate part by those with incomes below thirty percent of the AMI:

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120. 50TH PERCENTILE RENT ESTIMATES, U.S. DEP'T OF HOUSING & URB. DEV. (2005), <http://www.huduser.org>; FY2005 INCOME LIMITS, U.S. DEP'T OF HOUSING & URB. DEV. (2005), <http://www.huduser.org>.

121. There have been widespread reports of a national housing bubble in the United States, but analysts assert that these reports are incorrect. Instead, they have identified housing bubbles in many metropolitan areas, and they suggest that if some of these bubbles were to burst simultaneously, there would be significant national consequences, as the burst of a housing bubble could potentially cause more harm than that of a stock market bubble. *Castles in Hot Air*, THE ECONOMIST, May 31, 2003, at 8; *House of Cards*, THE ECONOMIST, May 31, 2003, at 3. Recent news, however, suggests the problems with the housing and mortgage markets run far deeper than previously thought. *See, e.g.*, Paul Krugman, *Gone Baby Gone*, N.Y. TIMES, Oct. 22, 2007, at A21.

122. MILLENNIAL HOUSING COMMISSION, MEETING OUR NATION'S HOUSING CHALLENGES 1 (2002) [hereinafter MEETING OUR NATION'S HOUSING CHALLENGES].

123. *Id.*

Table 1. Severe Housing Burdens (at least 50% of income going to housing) by Income Group<sup>124</sup>

Income Categories	Owners		Renters		Total Households		% of Total Households Severely Burdened
	All (1,000s)	Severely Burdened (1,000s)	All (1,000s)	Severely Burdened (1,000s)	All (1,000s)	Severely Burdened (1,000s)	
Extremely Low- Income (<30% AMI)	6,410	3,175	8,513	4,798	14,923	7,973	53%
Very-Low- Income (30–50% AMI)	7,138	1,151	6,243	1,121	13,381	2,272	17%
Low-Income (50–80% AMI)	10,680	783	7,270	252	17,950	1,035	6%
Moderate- Income (80–120% AMI)	14,284	465	6,681	93	20,965	558	3%
High-Income (>120% AMI)	30,283	239	5,300	15	35,583	254	0.7%
Total	68,795	5,813	34,007	6,279	102,802	12,092	12%

As another study points out, owning one's home is not necessarily any sort of protection against cost burdens; millions of people who own their homes still face housing problems. In 2001, nearly twenty-seven million low-income households that *owned* their homes faced moderate or severe housing cost burdens (a family has a moderate housing cost burden if it spends over thirty percent of its income on housing and a severe housing cost burden if it spends over fifty percent of its income on housing).<sup>125</sup> Thus, particularly at low incomes, the problem of affordable housing affects both owners and renters.<sup>126</sup>

124. Table reproduced from SMITH, *supra* note 2, at 12.

125. AMERICA'S NEIGHBORS, *supra* note 3, at 12–13.

126. Another recent Katrina-related example illustrates this point. The city of Gretna, LA, passed an emergency ordinance (later affirmed with a non-emergency ordinance) declaring a state of emergency in the City. *See* City of Gretna Ord. No. 3548 (Sept. 22, 2005) (emergency ordinance); City of Gretna Ord. No. 3551 (Nov. 14, 2005) (non-emergency ordinance). Among other things, the



The old solution that policymakers offered for the housing problem often exacerbated (and sometimes even created) community problems.<sup>127</sup> The ill-fated public housing projects of the 1970s were one such example. The projects created housing, but they also segregated individuals with low income and shut them off from the rest of society. With no money, no social resources, and no civic life, these projects often became riddled with crime, delinquency, and even more abject poverty.<sup>128</sup> Again, without a stable community, civic engagement was impossible.

Moreover, the phrase “community development” is (or at least *was*) almost devoid of content in these areas.<sup>129</sup> With few resources to draw upon, there was often very little community to develop. When highways carved up cities, segregating them further, those with the means to move out did so, while others (generally poor and black) were left behind.<sup>130</sup> The very policies that systematically destroyed our inner cities also destroyed their sense of civic life.<sup>131</sup> For this reason, any meaningful attempt to address the affordable housing crisis must do so in a manner that rebuilds these communities, and any attempt to build community in our cities must address the issue of housing. In tackling either of these issues, we should keep in mind the crisis in civic engagement that has plagued America for decades. This way, communities can sustain positive change over the long-term.

## 2. HOPE VI, reinvigorated

Writing for a school of thought known as the “new urbanism,” Duany, Plater-Zyberk, and Speck call for the creation of residential, retail, and commercial spaces in mixed-income, mixed-use zones.<sup>132</sup> The federal government’s “HOPE VI” program is an attempt to develop such

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ordinances allowed residents who had been affected by the Hurricane to live in FEMA-issued trailers on their property. However, the state of emergency was lifted effective January 2, 2007. *See* City of Gretna Res. No. 2006-069 (Aug. 14, 2006). A substantial number of residents were then required to move out of their trailers or risk fines and jail time. *See* Code of Ordinances, City of Gretna, LA §§ 102-84(b)(3), 102-262. A survey by the Loyola (New Orleans) College of Law found 93 households still living in their trailers after the January 2 deadline. Of those, a clear majority—59—owned the property the trailer was on; only 6 were renters (another 22 were “other,” including adult children who were living in trailers on their parents’ property). *See* Loyola Law Clinic, Gretna Survey, Jan. 6, 2007 (on file with author).

127. *Cf.* SMITH, *supra* note 2, at 13.

128. *See, e.g.*, DOWNS, *supra* note 5, at 10.

129. *Id.*

130. *See, e.g.*, FRUG, *supra* note 54, at 132–33.

131. *Cf. id.*

132. DUANY ET AL., *supra* note 60, at 156.

public housing, and it is a start.<sup>133</sup> HOPE VI aims to “promot[e] mixed-income communities” and “forg[e] partnerships with other agencies, local governments, nonprofit organizations, and private businesses.”<sup>134</sup> In essence, HOPE VI is an attempt to put new urbanist principles into practice.

But it is not enough. Currently, the HOPE VI program reaches “severely distressed public housing,”<sup>135</sup> characterized by deteriorating infrastructure, high rates of crime and vandalism, and low-income residents who are disproportionately dependent upon supportive social programs<sup>136</sup>—in short, the worst of the worst. While this is obviously a need, the program should be expanded to reach a wide swath of public housing, and, over time, public housing should be redesigned incorporating these principles. However, the redesign must *actually* meet the needs of low-income residents. Sometimes, HOPE VI programs involve demolishing existing housing to make way for the new, but when new housing is built, there are fewer low-income units than before. As a result, those who need affordable housing the most are those who are turned away.<sup>137</sup> Thus, in some cases, HOPE VI redevelopment actually results in a *net loss* of affordable housing units. While the idea behind the program is a commendable one, future HOPE VI development should require at least a one-to-one replacement of affordable housing units. Creating mixed-income neighborhoods is important, but not at the expense of crowding low-income residents out of affordable housing and into the private market.

Another limitation of HOPE VI is that it paints with broad strokes and neglects community-specific needs. A decade-long study of HOPE VI by the Urban Institute showed that children, elderly adults, and those with special needs often fell through the cracks. Additionally, when residents chose (or were forced) to relocate, they often did not have adequate information to make educated decisions. In short the bureaucratic approach failed, first, in reducing the units of housing available and, second, in responding to the actual needs of residents.<sup>138</sup>

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133. See U.S. Dep’t of Housing & Urb. Dev., *About HOPE VI*, <http://www.hud.gov/offices/pih/programs/ph/hope6/about/> (last visited March 1, 2006).

134. *Id.*

135. *Id.*

136. See Glossary of Hope VI Terms, <http://www.hud.gov/offices/pih/programs/ph/hope6/pubs/glossary.pdf> (last visited Aug. 16, 2006).

137. Conversation with Rick Glassman, Managing Attorney, Harvard Legal Aid Bureau, in Cambridge, Mass. (February 26, 2006).

138. SUSAN J. POPKIN ET AL., URBAN INSTITUTE, HOPE VI PANEL STUDY: BASELINE REPORT (2002).

A *Harvard Law Review* note on HOPE VI sheds further light on the difficulties of privatized governmental housing programs.<sup>139</sup> In line with above criticisms, the piece argues that HOPE VI has in fact reduced overall affordability in many of its project areas as a result of “replacing public units in already-tight housing markets with market-rate units,” while failing to maintain a one-to-one ratio of unit replacement. The result—fewer units of affordable housing—has placed greater pressure on other housing markets, and in particular those that are not funded by HOPE VI.<sup>140</sup> Additionally, the note contends that HOPE VI projects have generally failed to involve residents and members of the community to any remarkable extent, a crucial facet of the program’s mission.

The note argues that these and other deficiencies of the program are results of a failure of the “mechanisms of accountability” in the process of privatization. Public-private ventures find their success as a result of combined methods of accountability from each sector; where the private sector uses competition, choice, and contracts, the public sector relies on laws and regulations. Whereas the ideal process of privatization utilizes all of these accountability methods to achieve and produce a greater overall product, the note argues that the HOPE VI program has suffered as a result. Instead of a facilitating greater resident and community input, private contractual procedures have limited community involvement in the building process only to what the contracting parties (governments and developers) decide to allow. On the public side, HOPE VI’s inconsistent definitions of “severely distressed public housing” has given them power over residents who find themselves with little recourse if they are not approved for funding.<sup>141</sup> The note argues that without “third-party beneficiaries with standing under HUD contracts, meaningful choice by public housing residents, and opportunities for public input via notice-and-comment procedures, HOPE VI’s public and private partners have been insulated from significant sources of accountability.”<sup>142</sup>

These criticisms are valuable in the process of formulating a more successful public-private housing venture. In doing so, it is important to distinguish between failures of policy and failures of implementation. The note’s criticisms generally do not point to flaws with the policies underlying HOPE VI. In fact, the author of the note remarks at the outset that the privatization literature lacks an analysis of the privatization process with application to public housing. Certainly accountability

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139. Note, *When Hope Falls Short: Hope VI, Accountability, and the Privatization of Public Housing*, 116 HARV. L. REV. 1477 (2003).

140. *Id.* at 1484.

141. *Id.* at 1493.

142. *Id.* at 1498.

becomes difficult to maintain when “privatization obviates the distinction between public- and private-sector priorities,”<sup>143</sup> but any purported solution to the problems of privatization is only relevant insofar as the public-private venture meets its public goals.

In sum, the note underscores the problems that have afflicted HOPE VI in its years of implementation. Simultaneously, however, it recognizes, both explicitly and implicitly, that community development is a critical component of the successful development of public housing. In other words, part of the failure of HOPE VI, among other things, is its failure to live up to its own expectations by not meaningfully involving residents or providing citizens with a real range of choices.<sup>144</sup> This Article sets forth the assertion that HOPE VI has the potential to develop housing in a way that meaningfully engages communities and builds social capital. However, to do that, the program must live up to its own goals.

HOPE VI has the potential to bring together the right people and the right kind of development to sustain neighborhoods and alleviate housing problems. To do so, however, the program must, as the note argues, do more than just assume that “privatization,” “accountability,” and “partnership” will translate into real results. To be considered a success, the program must be remodeled and judged by its results, not its intentions.<sup>145</sup>

*a. Ordinary citizens, extraordinary results.* The best, and perhaps the only, way to ensure that these needs are met is by recognizing the link between civic participation and affordable housing. In other words, the only way housing developments will respond to people’s needs is if those managing these developments are continuously and regularly aware of what the residents’ needs are. And there is a way to institutionalize such a relationship.<sup>146</sup>

In his book *From Neighborhood to Nation*, Ken Thomson describes the “participatory model” of civic engagement. This model, he writes, is

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143. *Id.* at 1484.

144. *See id.* at 1484–92.

145. This seems obvious; there seems no reason the program should not be judged by its results. The problem lies in the assumption that privatization will *automatically* align interests, foster accountability, and build meaningful partnerships, all while increasing economic efficiency. *See generally id.* at 1481–84; Cf. Goutam U. Jois, *Can’t Touch This! Private Property, Takings, and the Merit Goods Argument*, 48 S. TEX. L. REV. 183, 187 n.6 (2006) (noting that efficiency may be little more than a “shibboleth,” when empirical calculation of all costs and benefits is not possible).

146. Cf. Bickford, *supra* note 38, at 356, and accompanying text (“[W]e must “redesign[] the institutional context in which citizens’ interactions and decisions take place”). This is similar to the argument evinced and examples cited earlier, demonstrating that a redesigned situation can foster the behavior and attitudes that lead to positive social change. *See supra* note 109.

designed to incorporate elements of a participatory democracy into our largely representative system. Under the status quo, “citizens are relegated to a passive role [between elections]: watching how the government performs and, as the next election rolls around, listening to opposing candidates for office.”<sup>147</sup> Thomson’s participatory model puts citizens in a more active role, engaging in an active associational life.

Unlike Putnam (who views basically all associations as *prima facie* good),<sup>148</sup> Thomson has a very specific *type* of association in mind. The participatory model advocates associations that feature (1) a small core of people who participate in face-to-face decision-making bodies, (2) aggressive outreach by core groups to the community at large, and (3) meaningful links to policy processes. These associations are neither fully governmental (i.e., not “just another bureaucracy”) nor fully private (i.e., not “market actors”), but instead retain elements of each.<sup>149</sup> Thomson’s model—the success and potential of which he demonstrates in his book, empirically as well as theoretically—enables ordinary people to collectively generate extraordinary results.

Thomson studies *neighborhood* associations in his book because it is at this level—the sub-local level—that participation is most effective. And while these small units are ill-equipped to deal with the big issues of the day (war, taxes, and so on), they are perfectly situated to govern these neighborhoods and ensure that housing developments accurately reflect community needs.

But Thomson’s model, as applied in this context, does not mean that we should, for example, simply encourage more tenants’ organizations. The participatory model calls for these associations to have meaningful links to the policy process. In addition to simply managing the affairs of the housing development, the association should be engaged in a whole range of other neighborhood issues. Downs writes that in today’s highly segregated low-income housing, “unemployment, crime, broken families, drug abuse, mental illness, disability, children born out of wedlock, gang membership, and structural deterioration are endemic.”<sup>150</sup> Neighborhood-level participatory associations should be empowered not only to address “traditional” issues related to housing (such as admitting new tenants, zoning, etc.), but also to tackle some of these more crosscutting problems that plague low-income housing today.

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147. KEN THOMSON, *FROM NEIGHBORHOOD TO NATION: THE DEMOCRATIC FOUNDATIONS OF CIVIL SOCIETY* 3 (2001).

148. See, e.g., PUTNAM, *supra* note 6, at 93 (considering “even simply nodding to another regular jogger on the same daily route” to be “a tiny investment in social capital.”).

149. *Id.*

150. DOWNS, *supra* note 5, at 10.

Note that there is nothing in the participatory model that limits it to the geographic area of the housing development. Thus, in this mixed-use, mixed-income neighborhood, several blocks might consist of existing businesses, organizations, and residents. Other parts of the “district” might include a school or a hospital, the housing development, and public parks. The participatory association would draw, then, from the residents of the new urbanist tract as well as business officials, civic leaders, and others in the neighborhood. In fact, there are strong reasons why these associations should *not* be limited solely to a single building or development. Mixed associations would build alliances between and among groups and individuals who are not usually aligned in their political views. For instance, a landlord is more likely to be accommodating when he associates with his tenants in person and, similarly, groups that tend not to associate due to perceived differences between them might also enjoy improved relations. Although the purpose of this article is not to explore in detail the positive political spillover effects of these types of associations, it seems fairly clear that such effects do exist.

If civic life were weak or nonexistent, the participatory associations would have a harder time engaging residents. But even here, the link between affordable housing and community development is fairly strong. The shortage of public housing, especially in cities, means that any new development would see an influx of residents. By creating mixed-income developments, planners would draw a more diverse cross-section of the population (especially since, as noted above, mixed-income development overcomes the problem of political will). These residents could then serve as the catalyst for future community development and participation.

Legislation recently proposed—and defeated—in the City of Boston provides an example of the positive civic effects that participatory organizations can serve. In late 2006, Boston City Council Members Sam Yoon and Felix Arroyo introduced a measure that would require collective bargaining between certain landlords and recognized tenant associations.<sup>151</sup> The law was primarily intended to level the playing field between landlords (who are typically repeat players in the rental market) and tenants (who are typically “one-shot” players). But the law went further. Tenants’ associations, the drafters noted, did more than simply maintain affordable rents for their tenants. They were also “beneficial to creating a secure living environment . . . , cleanliness, safety, proper maintenance, security, energy efficiency, control of operating costs, and

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151. See *An Ordinance Regarding Residential Dwelling Units in the City of Boston* (2006).

minimization of illegal activity.”<sup>152</sup> In short, the collective bargaining legislation, by providing an institutional context in which residents could interact with landlords, created significant positive externalities and fostered civic engagement.

Perhaps not boding well for the future of such proposals, the collective bargaining ordinance failed in the Boston City Council by a vote of eight to five. However, my experience with the measure—as one who helped draft and also lobby for the ordinance—suggests that the proposal failed because of worries about the proposal being a disguised form of rent control, not because of any suggestion that the proposal would decrease civic engagement.<sup>153</sup> The example, however, shows that the model has promise, at least in theory. As discussed earlier in this Article, the question of political will is one that must be separately addressed.

*b. Conclusion.* The HOPE VI program provides a template—though not a wholly positive one—for how affordable housing might be expanded. Thomson’s model of participatory association shows how such an expansion can be linked to reinvigorating low-income communities. In doing so, there are five important principles that should guide policymaking. First, programs along the lines of HOPE VI should be implemented broadly, not just in severely distressed communities. Second, any low-income housing units demolished should be replaced at a ratio of at least one-to-one. Third, neighborhood-based participatory associations should be empowered with sub-local governance, enabling these housing developments to participate in a meaningful civil society. Fourth, such associations should extend beyond the geographic boundaries of the development itself to provide for as diverse a participatory base as possible. Finally, the developments should be of a high-density, mixed-income, mixed-use character, to create diversity within the developments to the greatest extent possible.

### *B. Public-Private Partnerships*

If there is one lesson standard microeconomic theory teaches us, it is that nothing is free. Any policy, no matter how desirable, has to be funded. The previous section called for an expansion of public housing

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152. *Id.* at 1.

153. A particularly well-organized opposition constituency was the so-called “Small Property Owners’ Association,” which characterized the proposal as an “effort . . . to try to bring some form of rent control back to Boston,” which—at least in my view—it clearly was not. SPOA Home Page, <http://www.spoa.com> (last visited October 28, 2007).

through programs like HOPE VI, including in areas that are not severely distressed. In this arena, partnerships between public and private sector entities are critical.

While providing incentives to bring businesses into inner cities is a job for the government, many of the non-residential units in these neighborhoods must be supported by the private sector. But this is not a one-way street. While the government should block out private space within its public housing developments, there should also be public space within a system of shops, restaurants, and businesses. This will allow private sector entities to capitalize on the pedestrian traffic to generate business, while the physical space itself will facilitate communication and association (recall the earlier example of the café placed near a shopping center).

Thus private development is necessary to revitalize neighborhoods, and that development should include space that can become part of the neighborhood's civic life. But on a deeper level, this policy requires a reconceptualization of property and its meaning. Typically, property is thought of as something owned by a particular individual; he is then free (among other things) to exclude others from his property.<sup>154</sup>

Indeed, even early public forum cases used this classical and simplistic idea of property. In *Davis v. Massachusetts*, for example, the Supreme Court reasoned that “[t]he right to absolutely exclude all use, necessarily includes the authority to determine under what circumstances such use may be availed of, as the greater power includes the lesser.”<sup>155</sup> Such a conception of property generally, and the right to exclude specifically, presumed that public land was unavailable for public assembly; it was only through explicit authorization that the default rule could be changed.

Several decades later, the Court revisited the doctrine in *Hague v. CIO*. There, the Court said that although title to

streets and parks may rest in governments, they have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions. Such use of the streets and

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154. See, e.g., 2 WILLIAM BLACKSTONE, COMMENTARIES \*1–2 (“There is nothing which so generally strikes the imagination, and engages the affections of mankind, as the right of property; or that sole and despotic dominion which one man claims and exercises over the external things of the world, in total exclusion of the right of any other.”).

155. *Davis v. Massachusetts*, 167 U.S. 43, 48 (1897).



public places has, from ancient times, been a part of the privileges, immunities, rights and liberties of citizens.<sup>156</sup>

In so holding, it would appear that the Court cut back the *Davis* theory that public lands are treated (for public forum purposes) essentially the same as private lands. But *Hague* introduced a new wrinkle: only those places that, since “time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions” were considered public fora.<sup>157</sup> This doctrine has led to a convoluted series of cases that hold property to be a public forum only if it has “traditionally” been a public forum. Thus, under this rubric, parks and streets count as a public forum,<sup>158</sup> but public airports do not;<sup>159</sup> trees in a park are a public forum,<sup>160</sup> but utility poles are not.<sup>161</sup> The town square is a public forum, but the local mall is not.<sup>162</sup>

Such a conception of property, for obvious reasons, seems inimical to the very project: if private development—necessary to revitalize the inner cities—will create spaces that are not public fora, then it would seem that the goal of revitalizing inner cities is at odds with the goal of increasing civic engagement.

This is why, for example, Duany, Plater-Zyberk, and Speck bemoan the “evisceration of public space” to make room for highways.<sup>163</sup> Creating a “downtown where nobody walks” is as good as not creating a downtown at all. And so mixed-use zoning must accommodate sidewalks for the crowds that will—and for the sake of civic engagement must—congregate on the streets, in shopping plazas, and in other public areas, whether those areas would be considered public fora as a matter of doctrine or not.<sup>164</sup>

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156. *Hague v. CIO*, 307 U.S. 496, 515 (1939).

157. *Id.*

158. *See Lloyd Corp. v. Tanner*, 407 U.S. 551, 559 (1972) (“Publicly owned streets, sidewalks, and parks are so historically associated with the exercise of First Amendment rights that access to them for purposes of exercising such rights cannot be denied absolutely.”); *Cf. Hague*, 307 U.S. at 515.

159. *Int’l Soc’y for Krishna Consciousness v. Lee*, 505 U.S. 672, 680 (1992). *But see id.* at 693 (Kennedy, J., concurring) (“Failure to recognize . . . that new types of government property may be appropriate forums for speech will lead to a serious curtailment of our expressive activity”).

160. *Cf. Lloyd Corp.*, 407 U.S. at 551; *Hague*, 307 U.S. at 515.

161. *Members of the City Council of L.A. v. Taxpayers for Vincent*, 466 U.S. 789, 814 (1984) (stating that there is no First Amendment right of access to government property).

162. *See PruneYard Shopping Ctr. v. Robins*, 447 U.S. 74, 80–81 (1980) (rejecting the claim that a handbill restriction may not be enforced in a mall that is open to the public).

163. DUANY ET AL., *supra* note 60, at 159.

164. *PruneYard* provides a doctrinal hook for such a practice. That case suggests that, although the First Amendment does not consider public shopping centers public fora for Constitutional purposes, states are free to impose public access requirements on developers. States

Writing over thirty years ago, Richard Sennett said, “[C]ity spaces should be for varied, changeable use.”<sup>165</sup> In an area that was not “rigidly zoned,” we could find “some light manufacturing, perhaps a brothel or two, many small stores, bars, and inexpensive family restaurants.”<sup>166</sup> In advocating this type of a downtown, Sennett was foreshadowing the new urbanists and their call for mixed-use development. When he wrote that “all the great whorehouses are gone,” saying the social aspect of brothels had declined,<sup>167</sup> Sennett was foreshadowing the very lack of community that Putnam writes about today—the change from brothels to bowling is but semantic.

The town of Haddonfield, New Jersey provides an excellent example of the effectiveness of mixed-use zoning. The main street in Haddonfield is zoned so that everything on street level is public retail.<sup>168</sup> This generates pedestrian traffic in and out of stores regularly. Second and third floors are generally service-oriented businesses (such as law firms) or apartments. Sidewalks in the town are wide enough to accommodate pedestrian traffic and sidewalk seating for many of the restaurants. A town square with a small park and grassy area sits in the middle of Main Street. And a quick glance through the visitor’s guide to Haddonfield counted no less than sixty-five community organizations in town, for everyone from newlywed mothers to retired men,<sup>169</sup> all in a town with a population of just over 11,000 in the 2000 Census.<sup>170</sup> Putnam writes that “design innovations like mixed-use zoning, pedestrian-friendly street grids, and more space for public use should enhance social capital.”<sup>171</sup> Haddonfield supports Putnam’s prediction.

There is, however, one problem with the Haddonfield example: while Kings Highway is mixed-use, it is certainly not a mixed-income neighborhood. However, this might be the exception that proves the rule. It is axiomatic in economic theory that when supply is scarce, prices are high, and when supply expands, price drops. It is precisely because these types of mixed-use developments are rare that they are priced out of most

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(and their cities) should be aggressive in either enacting such requirements through statute or case law, or in the alternative, negotiating such agreements with individual businesses.

165. SENNETT, *supra* note 10, at 141.

166. *Id.* at 143.

167. *Id.* at 73.

168. See BOROUGH OF HADDONFIELD, N.J., CODE § 135–38 (1994) available at [http://www.e-codes.generalcode.com/codebook\\_frameset.asp?t=tcfull](http://www.e-codes.generalcode.com/codebook_frameset.asp?t=tcfull) (open the drop down menu entitled “Part II, General Legislation”; click on “Chapter 135: Land Development”).

169. Personal Visit to Haddonfield, NJ (April 12, 2002).

170. Haddonfield Borough, Camden County, New Jersey, <http://factfinder.census.gov/> (under the heading “Fast Access to Information,” enter “Haddonfield Borough” into the *city/town, county, or zip* field and enter “New Jersey” into the *state* field) (last visited Oct. 24, 2007).

171. PUTNAM, *supra* note 6, at 408.

residents' (particularly low-income residents) budgets. By encouraging and expanding these types of developments, local governments will drive down the price and ultimately facilitate mixed-income developments—at least in principle.<sup>172</sup>

This is not to imply that there is no role for local planning boards. While increased supply will drive down the price, smart planning and growth will also facilitate the development of mixed-income neighborhoods. This is especially important when developments are serving those at low incomes. Since these people are more likely to be disabled, non-working, or elderly, ensuring a mix of incomes is vital to maintaining a healthy neighborhood.<sup>173</sup> Moreover, local boards should ensure access to services and community responsiveness to residents' needs. By ensuring mixed-income development, local planning boards can also ensure a significant degree of diversity in the affordable housing developments—not only in terms of race and class but also in terms of disability, employment status, education, and other demographic factors.

Ensuring this kind of heterogeneity is an issue for local governments and planning boards because there is a general consensus that these problems should be addressed on the local level.<sup>174</sup> Local non-profits, community-organized programs, community development corporations, and independent citizen organizations are all examples of how individual residents can take an active part in their own communities.<sup>175</sup> However, all of these possibilities presuppose an engaged citizenry, a vibrant civil society, and a functioning public realm. How should policymakers proceed if they are not present (or active) in our inner cities today?

One answer is the ethical claim set forth earlier: the government must take some role in remedying the problems that it contributed to over the past fifty years and the participatory associations along the lines that Thomson envisioned could play a role. But Downs writes that tax abatement and other government initiatives offered in urban enterprise zones in the United States and United Kingdom “had little effect” in strengthening the local community. It was only after professional entrepreneurial organizations came in as partners that the programs’

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172. There is a bit of a chicken and egg problem here. Do mixed-use areas develop in already wealthy neighborhoods that are full of people who have the resources to shop, eat al fresco, and retain lawyers? Or do those services fill in blocks that are zoned for mixed use after the opportunity opens up? At a minimum, it is true that property values in the neighborhood have increased significantly since the 1994 zoning ordinance was enacted.

173. SMITH, *supra* note 2, at 21–27.

174. See DUANY ET AL., *supra* note 60, at 157–58 (citing an example of a graffiti-removal program that was administered entirely locally).

175. BENSON, *supra* note 92, at 96.

successes increased.<sup>176</sup> Historically, simply devolving political authority to local levels has not been effective either, suggesting that even Thomson's participatory associations are a necessary, but not a sufficient, condition for reform.<sup>177</sup> This illuminates the need for public planning combined with private-sector investment to create the results that we want—a revitalized citizenry that can lead a revival of civic engagement.

A key question in all of this is the issue of property values. Many people, even those who are well meaning, are reluctant to live in an area where affordable housing tracts are blocked out because they worry that their own property values will suffer as a result. But a recent study from the Massachusetts Institute of Technology suggests that these worries are misplaced. After studying mixed-income neighborhoods in the Greater Boston region, the study concluded that neighborhoods surrounding the affordable housing saw neither increases nor decreases in property value as a result of those housing developments.<sup>178</sup> The study examined seven rental developments going as far back as the mid-1980s, and in each case, the change in price of a single family home in an area near affordable housing was statistically identical to the change in price community-wide.<sup>179</sup> Moreover, when these communities were originally built, they were highly contentious; as an author of the study pointed out, they were met with such opposition that “[i]f there were ever a development that would cause a negative impact on surrounding property values, it would be one of the large, dense developments examined in this study.”<sup>180</sup> But even in these highly contested areas, the change in price for neighborhoods bordering the affordable housing developments was statistically insignificant from the change in control communities.<sup>181</sup> This trend held over short-run and long-run averages, when prices rose and when they fell. In short, the MIT study and others like it suggest that affordable housing can help those in need and not adversely affect the investments of those at moderate and high incomes.<sup>182</sup>

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176. DOWNS, *supra* note 5, at 102.

177. BERRY ET AL., *supra* note 115, at 97 (I assume that, *a fortiori*, the same argument applies to sub-local units).

178. See Henry O. Pollakowski, David Ritchay, & Zoe Weinrobe, *Effects of Mixed-Income, Multi-Family Rental Housing Developments on Single-Family Housing Values* MIT CTR. FOR REAL ESTATE: HOUS. AFFORDABILITY INITIATIVE (April, 2005).

179. *Id.* at i–iii.

180. *Id.* at iii.

181. See generally *id.*

182. Those who are greatly concerned about their property values might find this somewhat hard to believe. Yet a close reading of the literature suggests that the belief that property values would decline when affordable housing increases is merely speculative. See, e.g., Jennifer Devitt, Note, *Illinois' Affordable Housing Planning and Appeal Act: An Indirect Step in the Right*

*C. Choosing a Starting Point: The Inner Cities*

Part III demonstrated that efforts to improve civic engagement are best spent in cities because they provide an environment to foster association that the suburbs simply cannot. But this Article mentions rather extensively the problems of our “inner cities”—those regions so deteriorated and so poor in capital, financial and social, that Downs is reluctant to even call them neighborhoods. Why should we focus on these blighted areas instead of a troubled (but not destitute) region of a city with a diverse community that is, say, middle class?

*1. Practical payoffs: lessons from the Harvard Legal Aid Bureau*

Here, I present one answer to the question by drawing on my experiences as a student attorney with the Harvard Legal Aid Bureau (“HLAB” or “Bureau”). The Bureau represents indigent clients—generally those with incomes below 125% of the federal poverty line—in housing, domestic, and government benefits cases. These clients came to the Bureau because they were being evicted for various reasons; these cases illustrate how low-income clients can especially benefit from the policy prescriptions in this Article.

The first client, a woman seventy-six years of age, was facing an eviction because her grandson and his friends were arrested in the apartment for possession of marijuana. Following the precedent of

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*Direction—A Survey of Housing Appeals Statutes*, 18 WASH. U. J.L. & POL’Y 267, 279 (2005) (“[A]ffordable housing may lead to a decline in property values . . .”). *See also* MASSACHUSETTS ADVISORY COMMITTEE TO THE U.S. COMMISSION ON CIVIL RIGHTS AND THE MASSACHUSETTS COMMISSION AGAINST DISCRIMINATION, ROUTE 128: BOSTON’S ROAD TO SEGREGATION, 55 (1975); JOHN T. MCGREEVEY, PARISH BOUNDARIES: THE CATHOLIC ENCOUNTER WITH RACE IN THE TWENTIETH-CENTURY URBAN NORTH 79–110 (1996) (discussing the role urban Catholic parishes played in excluding minorities from neighborhoods to protect property values). Courts have held that even the possibility of declining property value is sufficient for standing to challenge the placement of affordable housing. *See Walker v. Mesquite*, 169 F.3d 973, 980 (5th Cir. 1999) (holding that homeowners have standing when “property values *would be* diminished by a next-door public housing or other HUD project.”) (citations omitted). However, the empirical evidence suggests that affordable housing has a very minor negative effect, or no effect at all, on property values. *See, e.g.*, Pollakowski, Ritchay, & Weinrobe, *supra* note 178; Peter H. Shuck, *Judging Remedies: Judicial Approaches to Housing Segregation*, 379 HARV. C.R.-C.L. L. REV. 289, 360 (2002) (noting that there is no effect on property values, but citing one personal e-mail and telephone conversation suggesting that such declines did occur); GEORGE C. GALSTER, A REVIEW OF EXISTING RESEARCH ON THE EFFECTS OF FEDERALLY ASSISTED HOUSING PROGRAMS ON NEIGHBORING RESIDENTIAL PROPERTY VALUES 4, 26 (2002), available at [http://www.realtor.org/ncrer.nsf/files/galsterreport2.pdf/\\$FILE/galsterreport2.pdf](http://www.realtor.org/ncrer.nsf/files/galsterreport2.pdf/$FILE/galsterreport2.pdf) (finding only a slight negative effect on property values). In sum, there is no evidence that affordable housing significantly reduces property values. At best, there may be a slight negative effect, but the problem may stem more from stereotypes and perceptions rather than from actual market dynamics. *See Devitt, supra* note 182, at 286 (“This belief will not change until societal stereotypes about low or moderate income housing change.”).

*Department of Housing & Urban Development v. Rucker*, a recent U.S. Supreme Court case,<sup>183</sup> tenants are strictly liable for violations of lease terms on public housing premises; the housing authority need not show that the tenant intended or even knew of the violation. As a result, the elderly woman was being evicted for something she did not even know about.

Whatever the merits of *Rucker*,<sup>184</sup> the underlying problem in this case regarded the woman's housing, not applicable case law. She had raised children earlier, but they had all moved out. Yet the local housing authority had not moved her to elder housing, and she was in a three-bedroom apartment. Her grandchildren and other family members would regularly stay at her apartment, often uninvited, even though she preferred that they did not; as an elderly woman, she was not in much of a position to resist when they imposed on her. Again, the Urban Institute's study is informative. In designing affordable housing, they advise that housing authorities should "pay attention to the needs of older adults."<sup>185</sup> For example, mixed-use, mixed-income affordable housing could more widely include studio or one-bedroom elder housing units interspersed with other types of development. If such units existed for this woman (indeed, she had been trying to get into elder housing for years), her relatives would not be staying with her and she would not have faced this eviction proceeding.

The second client, Ms. C., was being evicted for nonpayment of rent; as of February 2006, she had not paid rent for almost a year. Ms. C. suffered from depression so acute at times that she was unable to perform acts as simple as opening her mail—and since she never opened her mail, she never paid her bills or rent. While she was receiving welfare benefits for some time, Ms. C. was unable to keep up with the work requirement as a result of her depression, and her welfare benefits soon lapsed. All of this was happening while Ms. C. was caring for her several children.

At first glance, this seems to be more an issue of mental health than affordable housing. But in its analysis of HOPE VI programs, the Urban Institute specifically found that developments were not adequately responding to residents' health needs.<sup>186</sup> This shortcoming could be coupled with Thomson's model of participatory association: if there were

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183. Dep't of Hous. & Urban Dev. v. Rucker, 535 U.S. 125 (2002).

184. There is good reason to think the decision was misguided for essentially punishing innocent tenants. Cf. Barbara Mulé & Michael Yavinsky, *Saving One's Home: Collateral Consequences For Innocent Family Members*, 30 N.Y.U. REV. L. & SOC. CHANGE 689, 690 (2006) (criticizing *Rucker* and similar rules as "policies [that] victimize innocent tenants by imposing collateral consequences upon them").

185. POPKIN ET AL., *supra* note 138, at 17 (2002).

186. *Id.*

a sub-local entity that was charged with governing Ms. C.'s neighborhood (and development), that entity would likely be aware of what problems there were in the development. While this might not have persuaded Ms. C. to pay her rent on time, it almost certainly would have gotten Ms. C. better mental health care, sooner—and kept her from getting evicted.

In the third and final case, Ms. A. was being evicted for having loud parties and having the police called to her apartment on numerous occasions. Ms. A. denied these allegations, and there were no police reports to substantiate the complaining neighbor's allegations. Nonetheless, tensions between the two reached a breaking point. Eventually, both the neighbor and Ms. A. moved out of their adjacent apartments. To Ms. A., however, the experience was about more than an eviction. Though she was a good student and talented athlete in her early teens, she soon fell in with the so-called "wrong crowd." She dropped out of high school and spent a month in jail. She was just recently getting her life back on track: moving into her own apartment, studying for the G.E.D., and generally becoming self-sufficient. Because of the eviction and the lack of any sort of meaningful community support, Ms. A. was forced to move out and start over elsewhere, away from her hometown.

While this case involved a private landlord, it nonetheless illustrates a link between housing and community development. It would be naïve to blithely say that Ms. A. and her neighbor would have gotten along if, for example, they had to collaborate on issues of neighborhood governance. But, at a minimum, such experiences would have forced them, in some way, to grapple on a small scale with the project of democracy: conflict and compromise. Thomson's participatory associations provide a way to facilitate this type of experience.

These anecdotes from the Harvard Legal Aid Bureau offer examples of situations where the new urbanist framework, combined with Thomson's model of neighborhood participatory associations, can address both the specific policy issue of affordable housing and the broader issues of community development and democracy.

## *2. An empirical view*

Policymakers should focus their efforts on low-income residents rather than middle-class residents because the examples from the Bureau illustrate how those who are low-income can uniquely benefit from these programs. But this relationship is supported by more than mere anecdotes. Empirical studies by Berry, Portney and Thomson (the same Thomson who, several years later, developed the model of participatory

associations) powerfully underscore the link between socioeconomic status (SES) and participation.

In their study, Berry and his co-authors studied five cities “that take face-to-face democracy seriously.”<sup>187</sup> Their empirical analysis of neighborhood participation used “neighborhood participation rating[s] as a reflection of the strength of neighborhood associations.”<sup>188</sup> Those citizens who lived in neighborhoods where associations were stronger tended to participate more and vice versa; in particular, this relationship “is strong and clear for low- and middle-SES residents.”<sup>189</sup> High-SES citizens, on the other hand, “are the least affected by the added impetus and resources of neighborhood associations.”<sup>190</sup> Also noteworthy, the relationship was more significant for low-SES residents (significant at  $p < .01$ ) than for middle-SES residents ( $p < .05$ ).<sup>191</sup> The policy implication is clear: higher-SES residents tend to be as engaged in a high-rated neighborhood as in a low-rated neighborhood (when measured by neighborhood association strength). Low-income residents, on the other hand, benefit significantly when neighborhood associations are stronger. As a matter of pure “bang for the buck,” then, we should focus our efforts on lower-income areas.

It is important to note that this measures the *difference* in participation rates based on community strength; therefore, it can serve as a predictor of the effects of policy interventions. In status quo ante terms, however, it is true that lower-SES residents are typically less engaged than those of higher SES levels.<sup>192</sup> Low-SES residents are underrepresented in communities with low, high, and moderate participation, as well as when associations are structured or unstructured.<sup>193</sup> In short, the relative disengagement of the poor cuts across city and neighborhood types. This provides an additional reason to focus our intervention (at least as an initial matter) on low-income residents: there is no reason to think that, unchecked, the disparities between low- and high-SES residents will narrow of its own accord.

In addition to participation rates, political efficacy rates vary by SES. Efficacy, as the authors describe it, involves a democratic process in which participation educates citizens, provides an opportunity for personal growth, and develops interpersonal relationships.<sup>194</sup> The

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187. BERRY ET AL., *supra* note 115, at 12.

188. *Id.* at 95.

189. *Id.*

190. *Id.*

191. *Id.*

192. *See id.* at 83.

193. *See id.* at 84.

194. *See id.* at 256. The authors go on to say that their survey measured “two different



statistical evidence “ma[d]e it abundantly clear that people who engage in face-to-face participation have a considerably greater sense of political efficacy.”<sup>195</sup> However, not all citizens reaped this benefit equally:

The patterns of correlation are perhaps most telling for people of low SES . . . . [F]or low-SES people, the local context does matter; low-SES people who engage in face-to-face participation in cities where there is broad-based access to such participation seem to reap *substantially greater efficacy benefits* than low-SES people who engage in community participation in cities where such participation is less common.<sup>196</sup>

Even if low-SES residents are not more likely to participate in certain situations, those who do participate are more likely to feel that their participation is effective than their middle- and high-SES counterparts.<sup>197</sup>

In other words, if the community structures are provided—as this Article argues should be done through mixed-use, mixed-income development—there is evidence to suggest that the payoffs would be greater for a low-SES resident than for a middle- or high-SES resident. Poor people are currently engaged the least in their communities and potentially stand to benefit the most from a revitalized public sphere. Berry, Portney, and Thomson’s study provides empirical support for the claim that civic engagement must be addressed in the cities generally, and in the low-SES regions of cities specifically.

## V. CONCLUSION

In one sense, the problem with affordable housing is simple: there is not enough of it, and we need more. But this simplicity is deceptive. If the housing projects of the 1970s have taught us anything, it is that this knee-jerk solution can cause more problems than it solves.

The HLAB examples illustrate that, for those who face housing problems, affordable housing is just one component of a broader set of personal and social challenges. The elderly woman wanted independence from her family, Ms. C. was struggling with depression, and Ms. A.—

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attitudinal dimensions, internal efficacy and external efficacy. *Internal efficacy* is an individual’s sense that he or she is capable of understanding politics and influencing the political process . . . . *External efficacy* . . . is an individual’s sense that the government will be responsive to his or her attempts to influence government.” *Id.* at 261.

195. *Id.* at 266.

196. *Id.* (emphasis added).

197. *Id.*

just twenty years old—was struggling to get her life back on track after a brief stint in jail. In short, the issue of affordable housing cannot be addressed in a vacuum. As a bipartisan commission studying affordable housing at the millennium recognized, “housing exists in a broader community context, and programs must consider the relation and impact of housing on [issues such as] education, economic opportunity, and transportation.”<sup>198</sup>

I address civic participation and affordable housing simultaneously because the two are inextricably linked. Community development hinges on diversity, participation, and growth. Civic engagement can best be improved by utilizing partnerships—between government and business, resident and community, high-income and low-income—to improve inner cities. Nevertheless, the task is far from complete.

Mixed-use, mixed-income developments, generated through public-private partnerships, are parts of the answer, but they are not the entire answer. They are not, and cannot be, viewed as a panacea; there may be other ways of increasing community participation and social capital that are not reflected in this Article. Just as participatory associations would not solve all of Ms. A’s problems with her neighbors, so too would they not solve all affordable housing problems everywhere—or even all problems of civic disengagement. Putnam’s recent work further demonstrates that we should be wary of simply assuming as a matter of ideology and political correctness that all diversity is always good, especially in urban areas. But as scholars have demonstrated, in theory and practice, empirically and as policy, ideas like this are an integral part of a solution.

This Article sought to bridge the theory of civic engagement with the policy of community development. Literature on this narrowly focused topic area seems relatively limited. Scholars of civic engagement usually mention urban policy tangentially at best, and vice versa. Further developing this intersection would not only improve the corpus of literature on the topic for political scientists and theoreticians but also help to improve the lives of millions of people who live in our inner cities today.

Regardless of these possibilities for future study, this Article has shown the need for a new urban policy that recognizes the potential of our cities and works to actualize that potential through affordable housing and community development. By doing so, we can take the first of many steps toward rebuilding America’s cities and revitalizing our civic health.

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198. MEETING OUR NATION’S HOUSING CHALLENGES, *supra* note 122, at 3.